



PENNSYLVANIA INSTITUTIONAL LAW PROJECT

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November 1, 2021

Via First Class Mail and Fax (570) 783-2008

Superintendent Bernadette Mason
301 Morea Road
Frackville, PA 17932

Dear Superintendent Mason,

I am writing on behalf of the Pennsylvania Institutional Law Project to express profound concern about the lack of accommodations being provided to our client, Dawn Guthrie, MQ7942.¹ Ms. Guthrie is a transgender woman incarcerated at SCI Mahanoy who has been diagnosed with both Gender Dysphoria and Depressive Disorder. Ms. Guthrie is currently subjected to invasive strip searches by male correctional officers at any time. These searches and the prospect of future searches cause her severe emotional distress, anxiety, thoughts of self-harm, and trigger her previous experiences of sexual and physical trauma in Department of Corrections (“DOC”) custody. We ask that you provide her with a reasonable accommodation and allow Ms. Guthrie to be searched solely by female correctional officers going forward.

Transgender incarcerated people, like Ms. Guthrie, face rampant sexual abuse and harassment while in prison. The National Center for Transgender Equality has found that transgender people held in jail and prison were five times more likely to be sexually assaulted by facility staff and over nine times more likely to be sexually assaulted by other incarcerated people than their cisgender counterparts.² Unfortunately, this bleak reality causes many transgender incarcerated people to live with the constant fear of being assaulted while in custody, especially those, like Ms. Guthrie, who already have personal experience with this type of violence. Subjecting transgender people to cross-gender strip searches intensifies this very legitimate concern and poses a substantial risk of retraumatizing sexual assault survivors. This harmful practice is completely unnecessary and easily preventable.

Ms. Guthrie was diagnosed with Gender Dysphoria in 1998 and is currently in treatment, including hormone therapy since 2017. She has a pending lawsuit in the Middle District of Pennsylvania, *Guthrie v. Wetzel*, 1:20-cv-2351, seeking further treatment due to her acute, ongoing

¹ Ms. Guthrie is a transgender woman and following accepted medical and judicial practices, we refer to her by her preferred name and female pronouns and not by her deadname.

² National Center for Transgender Equality, *2015 U.S. Transgender Survey Executive Summary*, <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf> (last viewed October 20, 2021).

symptoms.³ She was also diagnosed with Depressive Disorder in 2015. DOC mental healthcare providers have repeatedly acknowledged that she experiences traumatic event reactions resulting from her being violently assaulted in DOC custody at SCI Somerset and again at SCI Rockview.

Currently, Ms. Guthrie is subject to a comprehensive strip search by male staff members any time there is a shakedown of her unit as well as before and/or after any visits. Being forced to remove her clothing in front of a man triggers her trauma responses because of diagnosed medical conditions and her prior experiences of sexual assault, particularly the incidents which occurred in DOC facilities. Not only does Ms. Guthrie feel extremely violated during these searches, but she has also come to anticipate and fear even the possibility of being searched.

The threat of being strip searched by a man at any time causes Ms. Guthrie intense anxiety, panic attacks, depression and greatly increases her risk of self-castration and suicide. She experiences a panic attack every time a search team enters her housing unit, with an increase in her heart rate and dizziness. If the search team conducts a shakedown of the entire block, these symptoms can last for several hours as she waits in terror for the team to reach her cell. She is unable to participate in basic prison services, including visitation, because she cannot subject herself to any further strip searches without dangerously exacerbating her conditions. As a result, Ms. Guthrie has not been able to see her mother or other potential visitors since SCI Mahonoy reopened visitation in July 2021 and rarely if at all in the previous several years, adding to her isolation and mental distress. Ms. Guthrie has even informed her attorneys that she cannot cope with legal visits under these circumstances, hindering her access to counsel.

As you are undoubtedly aware, Title II of the Americans with Disabilities Act (“ADA”) prohibits covered entities from precluding an individual with a disability from participating in a program, service or activity because of their disability and requires them to provide “reasonable accommodations” to individuals with disabilities.⁴ Congress enacted the ADA “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”⁵ Title II of the ADA “has been interpreted as all-encompassing, and without any exception.”⁶ Courts have held ADA’s anti-discrimination mandate to be so vital that it must be “broadly construed to effectuate its purposes.”⁷ Failure to provide a reasonable accommodation can be an independent basis for liability under the ADA, even in the absence of any discriminatory motive.⁸

The Supreme Court has made clear that state prisons are covered entities under Title II of ADA and as such are required to provide reasonable accommodations to disabled individuals.⁹ Ensuring that the ADA protects those incarcerated in the nation’s prisons is particularly important, as the

³ While some claims relating to Ms. Guthrie’s medical care are currently in litigation, cross-gender strip searches are not currently at issue in that litigation.

⁴ *Pa. Dep’t of Corrs. v. Yeskey*, 524 U.S. 206, 209 (1998); 42 U.S.C § 12132.

⁵ 42 U.S.C. § 12101(b)(1).

⁶ *Schorr v. Borough of Lemoyne*, 243 F. Supp. 2d 232, 237 (M.D. Pa. 2003) (quotations omitted)

⁷ *Id.* at 235 (citing *Tcherepnin v. Knight*, 289 U.S. 332, 335 (1967)).

⁸ *Muhammad v. Court of Common Pleas*, 483 Fed. Appx. 759, 763 (3d Cir. 2012). *See also Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (noting Congress recognized “that failure to accommodate person with disabilities will also have the same practical effect as outright exclusion” or discrimination).

⁹ *Yeskey*, 524 U.S. at 210.

Department of Justice’s Title II regulations explain: “The Department wishes to emphasize that detention and correctional facilities are unique facilities under title II. [Incarcerated people] cannot leave the facilities and must have their needs met by the corrections system, including needs relating to a disability. If the detention and correctional facilities fail to accommodate [people] with disabilities, these individuals have little recourse...”¹⁰

Ms. Guthrie’s gender dysphoria and mental health diagnoses entitle her to the protections of the ADA. To establish a violation of Title II, an individual must show “that [she] is a qualified individual with a disability, who was precluded from participating in a program, service, or activity, or otherwise was subject to discrimination, by reason of [her] disability.”¹¹ Mental illnesses unquestionably satisfy the definition of disability under the ADA.¹² Due to her disability, which makes it impossible for Ms. Guthrie to be searched by male guards without intense distress, she has been excluded from prison services, including visitation. Ms. Guthrie has made several formal and informal requests to the DOC and staff at SCI Mahanoy to be searched by female staff, explaining how the current protocol interferes with her ability to function normally in the prison and causes her severe psychological harm. In the past she has been provided with this accommodation at multiple other DOC institutions without incident. However, SCI Mahanoy has thus far refused to provide her with any accommodation, thus exposing her to retraumatizing strip searches by men.

Permitting Ms. Guthrie to be strip searched only by one of SCI Mahanoy’s many female staff members is an easy and effective way to ensure that Ms. Guthrie’s disabilities are not preventing her from accessing services and that SCI Mahanoy is not actively making her conditions worse. The burden on SCI Mahanoy would be incredibly slight compared to the benefit to Ms. Guthrie, which would be significant and potentially lifesaving.

We urge you to take our concerns seriously and provide Ms. Guthrie with this reasonable accommodation as the current protocol is causing her daily distress and preventing her from participating in prison services and programs. We would appreciate a response by December 1, 2021 with an explanation. If we do not receive a response, we may take further action.

If you have any questions or concerns, you may contact Alexandra Morgan-Kurtz (amorgan-kurtz@pailp.org), (412) 434-6004) or Grace Harris (gharris@pailp.org), (215) 925-2966). Thank you.

¹⁰ 28 C.F.R. pt. 35, App. A, at 663 (2017).

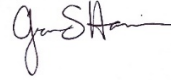
¹¹ *Furgess v. Pa. Dep’t of Corr.*, 933 F.3d 285, 288-89 (3d Cir. 2019); *see also* 29 U.S.C. § 706(7)(B).

¹² 29 C.F.R. § 1630.2(h) (defining “physical or mental impairment” within the ADA to mean “any mental or psychological disorder, such as ... emotional or mental illness...”). *See also* 29 C.F.R. § 1630.2(j)(3)(ii)(iii) (observing that a list of mental health conditions, including major depressive disorder, will “virtually always be found to impose a substantial limitation on a major life activity”); *Snider v. Pa. DOC*, 505 F. Supp. 3d 360, 408 (M.D. Pa. 2020) (concluding that mental health illnesses that “substantially limit brain function” constitute disabilities); *Dean v. Univ. at Buffalo Sch. of Med. & Biomedical Scis.*, 804 F.3d 178, 191 (2d Cir. 2015) (finding that a student’s depression was a disability under the ADA).

Sincerely,

/s/ Alexandra Morgan-Kurtz

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Managing Attorney



Grace Harris
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